IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1944

No. 1122

In the Matter of

CHICAGO, NORTH SHORE & MILWAUKEE RAILROAD COMPANY,

Debtor.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, et al.,

Petitioners

vs.

CHICAGO, NORTH SHORE & MILWAUKEE RAILROAD COMPANY (John B. Gallagher and Edward J. Quinn, Trustees),

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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THE TWENTIETH CENTURY PRESS, INC., CHICAGO

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Now come the Brotherhood of Locomotive Firemen and Enginemen and Brotherhood of Railroad Trainmen, and pray that a writ of certiorari issue to the United States Circuit Court of Appeals for the Seventh Circuit, to review here the record and judgment entered by that Court on March 2, 1945 (R. 269).

Opinion Below.

The opinion of the Circuit Court of Appeals was entered March 2, 1945 (R. 262) and is not yet reported. The United States District Court did not render an opinion.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A. 347, 43 Stat. 938).

Statutes Involved.

On October 27, 1941, formal proceedings were conducted by the National Mediation Board in accordance with Section 2, Ninth, of the Railway Labor Act, as amended (Act of June 21, 1934, c. 691, 48 Stat. 1185, 45 U. S. C. 151 et seq.), to investigate a representation dispute among motormen, conductors, collectors, brakemen and switchtenders employed by the Chicago, North Shore and Milwaukee Railroad Company. While the National Mediation Board had the matter under advisement preliminary to conducting an election by secret ballot on February 27, 1942, the receivers of the carrier, on February 18, filed Suggestions with the District Court Judge upon which a temporary order was entered directing that "pending adjustment of the jurisdictional labor difficulty" temporary operation of the carrier was to be had "on the basis of change of crews at Howard Street and that the North Shore cars south of Howard Street be operated by Rapid Transit crews * * * ". Certain provisions of the Railway Labor Act, as amended, are involved because a change in an agreement affecting working conditions was ordered in violation of the provisions of Section 6 of the Act, as amended.

Section 6 of the Act, as amended, provides as follows:

"Sec. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

In addition, the General Duties prescribed in the Act, as amended, are similarly involved:

"Sec. 2. First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier and its employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purpose of this Act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other.

Fourth. In case of a dispute between a carrier and its employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions it shall be the duty of the designated representative or representatives of such carrier and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided* (1) That the place so specified shall be situated upon the railroad line of the carrier involved unless otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further,* That nothing in this paragraph shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Fifth. Disputes concerning changes in rates of pay, rules or working conditions shall be dealt with as provided in section 6 and in other provisions of this Act relating thereto."

The sanctions of the criminal as well as the civil law have been made applicable by Section 2, Tenth of the Act of June 21, 1934, to changes, without thirty days' notice in the rates of pay, rules or working conditions of classes of employees (Section 2, Seventh), to interferences with labor organizations of the employees (Section 2, Fourth), to coercive attempts to induce employees to join or not to

join a labor organization (Section 2, Fourth and Fifth) and to interferences with the designation of representatives (Section 2, Third).

Questions Presented.

1. Whether or not Section 6 of the Railway Labor Act, as amended, is to be construed in its application to the facts in this case, so as to permit a carrier to change an agreement affecting working conditions, without first giving at least thirty days' written notice to the authorized and designated representatives of the employees of an intended change in working conditions, in an effort to arrange for a time and place for the beginning of conference between the representatives of the parties interested in such intended changes.

2. Whether the receivers, trustees, or other individual or body, judicial or otherwise, when in the possession of the business of a carrier, may, while a dispute is in the hands of the National Mediation Board alter or otherwise change working conditions before the controversy has been finally acted upon by the Board.

3. Whether the duty to give at least thirty days' written notice of an intended change in an agreement affecting rates of pay, rules, or working conditions, and fix the time and place for the beginning of conference between representatives of the parties interested in such intended changes, was mandatory on the receivers, trustees, or other individual or body, judicial or otherwise, when in the possession of the business of such carrier.

4. Whether a carrier subject to the Railway Labor Act may enter into an inter-corporate agreement with an intrastate carrier following issuance of a temporary order of court effecting a change in working conditions provided for in a collective bargaining agreement and thus subsequently deprive its employees of contract and other valuable rights

contained in such an agreement which rights have been exercised by the employees uninterruptedly for a period of 23 years.

5. Whether a removal of employees of an interstate carrier in runs operated by them according to seniority and valuable contract rights without interruption for a period of 23 years, and substituting employees of an intrastate carrier on such runs, effected a change in working conditions within the provisions of Section 2, First, Seventh, Section 5, and Section 6 of the Railway Act, as amended.

Specification of Errors.

The Circuit Court of Appeals erred—

1. In holding that the change in working conditions, the removal of the crews of an interstate carrier and substituting therefor employees of an intrastate carrier was not such a change in working conditions as is prohibited in Section 6 of the Railway Labor Act, as amended, but merely constituted a change in the inter-corporate operating arrangement between the two companies.

2. In holding that the Chicago Rapid Transit Co., an intrastate carrier, in leasing trackage rights to the Chicago, North Shore and Milwaukee Railroad Co., an interstate carrier, tracks which were owned by the Chicago, Milwaukee, St. Paul and Pacific R. R. Company, had the right to regulate the operation of the interstate carrier over such leased tracks to the extent of insisting upon the operation of the interstate carrier by employees of the intrastate carrier in violation of the rights guaranteed employees of the interstate carrier by the Railway Labor Act, as amended.

3. In holding in disregard of the provisions of Section 6 of the Railway Labor Act, as amended, a carrier may, while

the National Mediation Board has under advisement a representation dispute, alter or change working conditions before the controversy has been acted upon by the National Mediation Board, as required by Section 5 of the Act.

4. In refusing to follow and apply the decision of this Court in *The Order of Railroad Telegraphers* v. *Railway Express Agency, Inc.*, 321 U. S. 342, construing Section 6 of the Railway Labor Act, as amended.

5. In refusing to apply the decisions in *In re Central R. Co. of New Jersey, Order of Ry. Cond. of America.* v. *Pitney* (Third Circuit), 145 F. (2d) 351; *Burke* v. *Morphy* (Second Circuit), 109 F. (2d) 572, certiorari denied 310 U. S. 635, and *Railway Employees, etc.* v. *Atlanta B. & C. Ry. Co.* (D. C. Ga.), 22 F. Supp. 510, in construing the provisions of Section 6 of the Railway Labor Act, as amended.

6. In holding that the term "working conditions" as used in Section 6 of the Railway Labor Act, does not include any and all circumstances concerning work required of employees covered in a collective bargaining agreement.

7. In holding that there was no interference by respondents or by the District Court with the representation dispute in entering the order requiring a removal of regular employees and substitution of employees of another carrier immediately preceeding an election by secret ballot conducted by the National Mediation Board in accordance with Section 2, Ninth, of the Railway Labor Act.

8. In holding that the controversy which brought about the interruption of movement of interstate trains and the entry of the order in the District Court was a dispute between employees of the intrastate carrier and employees of the interstate carrier.

9. In holding that the Railway Labor Act does not exclude a State from exercising its police power or the right to approve or disprove terms and conditions upon which

one carrier might allow another carrier to use the former's properties or facilities to the deprivation of valuable contract rights provided for in a collective bargaining agreement guaranteed under the Railway Labor Act.

10. In holding that the decision of this Court in *Terminal Railroad Association* v. *Brotherhood of Railroad Trainmen*, 318 U. S. 1, 6, was controlling.

11. In affirming the order of the District Court.

Summary Statement of the Matter Involved.

Petitioners are voluntary unincorporated associations, national in scope, selected by crafts and classes of employees of carriers by railroad in accordance with the provisions of Section 2 of the Railway Labor Act, as amended. Respondent, a corporation, is an interstate carrier operating in interstate commerce between the City of Milwaukee, Wisconsin, and Chicago, Illinois.

Proceedings were instituted before the National Mediation Board October 27, 1941, to investigate a representation dispute among employees on the property of the carrier engaged in train, engine and yard service. The Board rendered its opinion on February 9, 1942, directing that a secret ballot be taken to settle the representation dispute and assigned a Mediator to conduct such election and report the results to the Board (R. 5). The election was conducted on February 27, 1942, under the provisions of Section 2, Ninth, of the Railway Labor Act, as amended (R. 109).

On February 14, 1942, the receivers of the carrier filed certain documents in the District Court entitled "Report on Labor Difficulty Respecting North Shore trains" (R. 79-85) and a supplemental document entitled "Suggestion of A. A. Sprague and Bernard J. Fallon of a Temporary Method of

Running North Shore Trains Into Chicago Pending Adjustment of the Jurisdictional Labor Difficulty" (R. 84).

Following the filing in open Court on Saturday, February 14, 1942, of the "Suggestions" by the receivers, no evidence having been heard, the District Court Judge late in the afternoon of that day, issued an invitation to the representatives of the employees to attend a conference in his chambers on Sunday afternoon, February 15th. The meeting thereupon took on the appearance of a public gathering. The invitation of the District Court Judge negatived any intention to take testimony or hear argument on any application or motion.

On the following Wednesday, February 18, an order was entered, without notice to the representatives of the employees and without hearing any testimony, directing that "pending adjustment of the jurisdictional labor difficulty" *temporary operation* was to be had "on the basis of change of crews at Howard Street and that the North Shore cars South of Howard Street be operated by Rapid Transit crews" * * * (R. 91).

A collective bargaining agreement was promulgated between the former representative of employees engaged in train, engine and yard service with the carrier in 1919, and revised periodically since that date. These agreements contained closed shop provisions which became invalid after the carrier was declared not to come within the exemption *proviso* of the First paragraph of the Railway Labor Act, 122 F. (2d) 128, cert. denied 314 U. S. 669. The agreement in effect at the time of the entry of the temporary order of February 18, became effective June 1, 1941, and was promulgated between Division 900 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America and the receivers. The agreement contained the following provision:

"Section 2(c). All working conditions not specifically mentioned in this contract will remain as at present except as changed by mutual agreement" (R. 41).

Respondents did not dispute that, (a) no notice was given to the employees or to their representatives under the Railway Labor Act of an intended change in working conditions under the then existing agreement, and (b) that no notice was given the employees of the order of February 18th (R. 91). The record is devoid of any showing that Section 6 of the Railway Labor Act was complied with and there was no contention in any of the documents filed by the receivers or by the trustees or in the argument before the District Court or the Court of Appeals below that the mandatory duty of giving notice under Section 6 of the Act was complied with.

The National Mediation Board on March 4 and March 9, following the entry of the order of February 18, directing that the crews of the North Shore be removed at Howard Street and replaced by employees of the Rapid Transit Company, certified the petitioners herein as the duly authorized representatives of the employees engaged in train and yard service (R. 109, 138).

The employees involved, since all were affected by the Railway Labor Act, and entitled to the benefits of its provisions, continued to work under protest, under the order of February 18th. After petitioners had been certified by the National Mediation Board, notice was served on the receivers in accordance with the provisions of Section 6 of the Act of an intended change in the collective bargaining agreement obtained by Division 900 of the Amalgamated Association, which expired May 31, 1942. Failing to reach an adjustment through mediation and arbitration under the Act having been declined by the carrier an Emergency Board was appointed (R. 203).

Having exhausted all of the remedies available under the Railway Labor Act in an endeavor to have the receivers petition the Court for a vacation of the temporary order of February 18, petitioners intervened in the bankruptcy proceedings and filed their motion to vacate the order (R. 4). The matter was referred by the District Court Judge to a Special Master in Chancery for hearing. The Special Master filed his report and Findings of Fact and Conclusions of Law on June 5, 1944, wherein he held that no change of any conditions or facts existed warranting the District Court in vacating the order of February 18th (R. 228-237). Objections were filed to the Report and an order entered in the District Court wherein the Report of the Special Master was adopted in all things and that each and every objection thereto filed by petitioners were overruled and the motion of petitioners to vacate the order was denied and the motion dismissed (R. 247).

In affirming the order of the District Court, the Court below erroneously held that in view of the decision of this Court in *Terminal Railroad Association* v. *Brotherhood of Railroad Trainmen*, 318 U. S. 1, 6, that it was not the Intent of Congress in the enactment of the Railway Labor Act to exclude a State from exercising its police power or the right to prove or disprove the terms and conditions upon which one carrier might allow another carrier to use the former's properties or facilities and that as a result of such decision by this Court the Illinois Commerce Commission was not prohibited, following the entry of the temporary order of February 18, from authorizing inter-corporate agreements which deprived the employees of the interstate carrier of rights and benefits conferred on them in the Railway Labor Act, as amended, and valuable contract rights contained in the collective bargaining agreement, which rights and benefits had accrued to and were exercised by the employees for 23 years without interruption.

As a basis for affirming the order of the District Court, the Court below misinterpreted the provisions of Section 6 of the Railway Labor Act and declined to apply the decision of this Court in the case of *The Order of Railroad Telegraphers* v. *Railway Express Agency, Inc.*, 321 U. S. 342; *In re Central R. Co. of New Jersey, Order of R. Cond. of America* v. *Pitney* (Third Circuit), 145 F. (2d) 351; *Burke* v. *Morphy*, (Second Circuit), 109 F. (2d) 572, certiorari denied 310 U. S. 635, and *Railway Employees, etc.* v. *Atlanta B. & C. Ry. Co.* (D. C. Ga.) 22 F. Supp. 510, and erroneously held, in effect, that Section 6 of the Railway Labor Act applied only in a case involving a reduction in rates of pay.

The record fails to show that at any time was there any attempt made on the part of petitioners to organize employees of the Chicago Rapid Transit Company. There is no basis therefore for the respondents' contention that a jurisdictional labor difficulty existed. No descriptive epithet applied to the dispute on the North Shore line can transform it into something other than it was.

The employees of the Rapid Transit Company now operating North Shore trains from Howard Street, Chicago, to Roosevelt Road and return, a distance of approximately 24.8 miles, were not carried on any seniority roster maintained by the North Shore line, nor did they vote, nor were they eligible to vote in the representation dispute at the election conducted by the National Mediation Board on February 27, 1942.

Respondents in their brief in the Court of Appeals below admit:

> "The Rapid Transit union did not, and did not claim to, represent any North Shore employees here involved. The representation dispute on the North

Shore as to who should represent North Shore employees was between the Brotherhood organizations, on the one hand, and a local North Shore union, known as Division 900 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America on the other."

Reasons for Granting the Writ.

This case presents important new questions with respect to the construction of the Railway Labor Act, as amended. The decision of the Court of Appeals below should be reviewed by this Court because:

1. It is a matter of public importance that the Railway Labor Act, as amended, should be properly and reasonably construed so that the collective bargaining agreements promulgated under the provisions of the Railway Labor Act may be maintained, and that no change or alteration of working conditions, may be effected by a carrier, any receiver, trustee, or other individual or body, judicial or otherwise, when in possession of the business of any such carrier while a dispute is in the hands of the National Mediation Board until the controversy has been finally acted upon by the Board, as required by Section 5 of the Act.

2. The decision of the Court of Appeals below is in conflict with the decision of this Court in *The Order of Railroad Telegraphers* v. *Railway Express Agency, Inc.*, 321 U. S. 342, in construing the Railway Labor Act as merely prohibiting changes in rates of pay and excluding changes in rules or working conditions, and authorizing such changes, without notice to or conference with the designated representatives of the employees.

3. The decision of the Court of Appeals below is in conflict with the decisions of the Circuit Court of Appeals for the Third Circuit, in *In re Central R. Co. of New Jersey, Order of Ry. Cond. of America* v. *Pitney*, 145 F. (2d) 351; for the Second Circuit, in *Burke* v. *Morphy*, 109 F. (2d) 572, certiorari denied 310 U. S. 635, and *Railway Employees, etc.* v. *Atlanta B. & C. Ry. Co.*, (D. C. Ga.) 22 F. Supp. 510, in approving methods employed repugnant to the Act in changing or altering working conditions which had been in effect for a period of 23 years.

4. The decision of the Court of Appeals below is contrary to and conflicts with the decision of this Court in *Texas & N. O. R. R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548; *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515; *Carlisle Lumber Co.* v. *National Labor Relations Board*, 94 F. (2d) 138, certiorari denied 304 U. S. 575; *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350.

This Court has dealt with distinct prohibitions against coersive measures and reiterated its views on the necessities of labor organizations and that Unions were essential to give employees opportunity to deal on an equality basis with their employers.

5. The right of the employees engaged in train, engine and yard service of the carrier represented by the petitioners, and the public interest in the efficient operation of railroads are seriously impaired by the decision of the Court of Appeals below.

6. The decision of the Court of Appeals below is further contrary to and conflicts with the decision of this Court in *Brotherhood of Railroad Trainmen et al.* v. *Toledo, Peoria*

& Western Railroad, 321 U. S. 50, wherein this Court held that negotiation, in the sense of bargaining collectively under the Railway Labor Act, is an obligation imposed by law. None of the provisions of the Railway Labor Act applicable to effecting a change in working conditions were complied with by the respondents or its former receivers at the time of securing the order of February 18, 1942.

Obviously, if the view of the Court of Appeals in this case is correct, collective bargaining agreements promulgated between the duly authorized representatives of employees with an interstate carrier, under the provisions of the Railway Labor Act, could be nullified by subsequent proceedings before a State public utility commission.

7. This is the first occasion upon which there has been presented to this Court the question of whether the Railway Labor Act contains an intent to exclude a State from exercising its police power or the right to approve or disapprove the terms and conditions upon which one carrier might allow another carrier to use the former's properties or facilities and strike down the valuable contract and seniority rights contained in the collective bargaining agreement with an interstate carrier which agreement was promulgated under and subject to the provisions of the Railway Labor Act.

The Court of Appeals has decided, and we believe erroneously, questions of great public importance affecting and disturbing relations between carriers and employees subject to the Railway Labor Act and inevitably encouraging disputes between the standard railroad labor organizations and management which should be avoided so far as possible, particularly in the present time of war.

I.

THE RAILWAY LABOR ACT IMPOSES A LEGALLY ENFORCEABLE OBLIGATION ON CARRIERS, RECEIVERS AND TRUSTEES TO "GIVE AT LEAST THIRTY DAYS' WRITTEN NOTICE OF AN INTENDED CHANGE IN AGREEMENTS AFFECTING WORKING CONDITIONS," AND TO ATTEMPT TO AGREE UPON A TIME AND PLACE FOR THE BEGINNING OF CONFERENCE BETWEEN REPRESENTATIVES OF THE PARTIES INTERESTED IN SUCH INTENDED CHANGES BEFORE ALTERING WORKING CONDITIONS.

The main question involved is whether or not Section 6 of the Railway Labor Act is to be construed in its application to the facts in this case, so as to permit a receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any carrier, to alter working conditions of any of its employees while a dispute is pending before the National Mediation Board or before the controversy has been finally acted upon, as required by Section 5 of the Act, by the National Mediation Board.

The primary purpose of the Railway Labor Act is to protect commerce. The Act clearly manifests the intention of Congress to encourage, and in certain instances, to require collective bargaining between carriers and their employes, through designated representatives, as a means of effecting the settlement of disputes between carriers and their employees which might tend to interrupt the flow of commerce or the operation of a carrier engaged in interstate commerce.

Congress encouraged the *making* and *maintaining* of collective bargaining agreements concerning working conditions between carriers and their employees (Section 2, First) through *representatives,* "designated by the respec-

tive parties in such manner as may be provided in their corporate organization, unincorporated association, or by *other* means of *collective action,*" (Section 2, Third), and provided that "all disputes between a carrier and its employees shall be considered, and, if possible, decided, with all expedition, *in conference between representatives,* designated and authorized so to confer, respectively, by the carriers and by the employees thereof interested in the dispute." (Section 2, Second).

While all disputes between a carrier and its employees were required by Section 2, Second, to be considered, and, if possible, decided, with all expedition, in conference between representatives of the parties interested in the dispute, Section 2, Fourth, Fifth, and Section 6 of the Act outlined the particular mode of procedural processes to be complied with respecting attempted mediation of two specified classes of disputes. Section 2, Fourth, outlined the procedure to be complied with in disputes between a carrier and its employees "arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions."

Section 2, Fifth, provided:

> "Disputes concerning changes in rates of pay, rules, or working conditions shall be dealt with as provided in Section 6 and in other provisions of this Act relating thereto."

Section 6 provided for notice to and an attempt to arrange a conference between representatives of the parties interested in an intended change, before any change should be made.

In each of these two specified classes of disputes, Congress imposed upon the designated representative or repre-

sentatives of the carriers and of such employees, the duty to give notice and to attempt to agree upon (Section 6) or specify (Section 2, Fourth) a time and place for conference between the representatives of the parties interested in the dispute, so that the dispute should be considered, and, if possible, decided, with all expedition, in conference between such representatives of the parties (Section 2, Second). Congress specifically enacted a statutory prohibition against a carrier altering working conditions, until after the representatives of the carrier and the representatives of the employees had exerted every reasonable effort to consider such disputes in conference. (Section 6).

Congress froze the rates of pay, rules and working conditions which were in effect between carriers and their employees by the provisions of Section 6, and provided further that such frozen "rates of pay, rules or working conditions shall not be altered by the carrier . . . unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Board of Mediation."

Aside from the provisions of Section 6, there was provided certain subsequent procedure, mandatory in character, which indicates the extent to which Congress has gone to safeguard railroad employees against summary and arbitrary alterations of rates of pay, rules or working conditions prescribed in their collective agreements with carriers. As outlined in the foregoing section, following the giving of notice, the Act requires holding of conferences between the parties. Where such conferences are unsuccessful, either party may invoke the services of the National Mediation Board, or the Board may proffer its services. That section places the duty of the Board "as its final required action," if its efforts to bring about a settlement through mediation have been unsuccessful, to

induce the parties to submit to arbitration. In the event that the dispute be not adjusted under the foregoing provisions of the Act, and an Emergency Board is created under Section 10, for thirty days thereafter, no change shall be made by the parties to the controversy in the conditions out of which the dispute arose.

It is undisputed that no notice as provided in Section 6 was given to the authorized representatives of the employees of intention to alter the working conditions provided in the collective bargaining agreement. The record is devoid of showing that Section 6 was complied with, and there was no contention either in the respondents' pleading or argument to the court that the duty of giving notice under Section 6 of the Act was complied with.

It would appear that the language employed in Section 2, Fifth, and Section 6, of the Act, would furnish no means of escape from the conclusion that the duties required by the sections are mandatory and that no change affecting working conditions can be validly accomplished without giving the thirty days' notice and following subsequent procedural processes.

The commands and prohibitions of these sections are clear and positive. The use of the word "shall" indicates that the direction is mandatory. It is the language of command, not advice. (*Escoe* v. *Zerbst,* 295 U. S. 490, 493.) When the purposes of the act are considered, there can be no doubt that the requirements of the Act for the giving of notice, etc., are mandatory upon the carrier employer. (*Virginia Ry. Co.* v. *System Federation No. 40,* 300 U. S. 515, 542-545.) Were the requirements of the Act advisory, the procedure herein outlined, which is designed to facilitate voluntary adjustment of disputes by requiring the *status quo* to be maintained after the giving of notice and

until at least thirty days after Mediation has failed or the Emergency Board has made its report, would be useless.

The Act, as amended June 21, 1934, strengthened the making and maintaining of agreements and prohibited arbitrarily altering working conditions prescribed in agreements by the addition of Section 2, Tenth, providing that a willful failure or refusal of a carrier, its officers or agents to comply with the terms of Section 2, Seventh, is a misdemeanor and punishable by fine or imprisonment, or both.

The Act, as it stood in 1926 when first enacted, imposed definite and enforcible obligations notwithstanding the absence of statutory penalties. (*Texas & N. O. R. R. Co.* v. *Brotherhood of Ry. & S. S. Clerks*, 281 U. S. 548, 567, 568, 569.) Criminal sanctions were plainly not necessary to the enforcement of the provisions of the Act, they were added by the amendment of 1934, (Section 2, Tenth), to prevent a carrier from changing working conditions, prescribed in a collective agreement or in Section 6 of the Act.

A.

The Circuit Court of Appeals erred in holding that displacement of North Shore crews with Employees of the Chicago Rapid Transit Company was not such a change in working conditions as is contemplated in Section 6 of the Railway Labor Act.

In *In re Central R. Co. of New Jersey, Order of Ry. Conductors of America* v. *Pitney*, 145 F. (2d) 351, in bankruptcy court proceedings, that Court held that the thirty day notice required by Section 6 of the Railway Labor Act of an intended change in rates of pay, rules, or working conditions was not given, and no effort was made to proceed in the manner prescribed by the Act. In the same

case the Court held that if road conductors were to be displaced, in contravention of an agreement, the volume of work available for members of that craft would be curtailed by that amount, and in event of a diminution in business those lowest on the roster would that much sooner be assigned to other runs, or be temporarily demoted to service as brakemen, or be without employment. The Court held that displacement of road conductors with yard conductors did involve a change in working conditions, within the sweep of the Railway Labor Act, and the remedy provided by the Act was exclusive.

In *Burke* v. *Morphy,* 109 F. (2d) 572, Cert. den. 310 U. S. 635, this Court refused to review a decision of the Court of Appeals which set aside a wage cut order of a District Court Judge ordering a receiver of a carrier to cut wages of the employees because the receiver had no money to pay the wages fixed in the collective bargaining agreement, and holding that such wage cut order was without legal justification because the Railway Labor Act, "forbids any intended change in an agreement affecting rates of pay unless thirty days' notice is given to the other party to the agreement."

An effort on the part of a carrier to change working conditions, without giving the thirty days' notice required by Section 6 was enjoined in *Railway Employees Coop. Assn.* v. *Atlanta B. & C. R. R. Co.* (D. C. Ga. 1938) 22 F. Supp. 510, where the prohibitory and mandatory effect of Section 6 was recognized.

In a case arising under the Newlands Act (Public No. 6, (63d Congress) approved July 15, 1913), a prohibition similar in effect was enforced. Section 9 of that Act provided that whenever receivers appointed by a Federal Court were in possession of a railroad "no reduction of wages shall be made by such receivers without the authority of the court therefor, after notice to such employees,

said notice to be given not less than twenty days before the hearing upon the receivers' petition or application * * *." In *Birmingham Tr. & Sav. Co.* v. *Atlanta, B. & A. Ry Co.* (D. C. N. D. of Ga. 1931) 271 Fed. 731, an order of the court authorizing a reduction of wages without the delay of twenty days was held to be without legal effect. The court upheld the validity of the Act in that case.

The receivers of the Chicago, North Shore & Milwaukee Railroad Company were likewise Trustees for the Chicago Rapid Transit Company. This made it convenient for the receivers to make the "Suggestions" to the District Court to prefer Rapid Transit employees to operate North Shore trains and thus attempt to influence and coerce North Shore employees against renouncing representation of Division 900 of the Amalgamated Association. The receivers of the North Shore line were subject, however, to the provisions of the Railway Labor Act, but despite that, they, as trustees of the Rapid Transit line, would relieve themselves of the mandatory provisions of the Railway Labor Act by attempting to assert a dispute between the employees of the Rapid Transit line and the employees of the North Shore line, which never did exist in fact. The receivers thus preferred the employees of the Rapid Transit line as against their own employees shortly before the election was to be conducted by the National Mediation Board. The respondents admit that the Rapid Transit employees who operate the North Shore trains south of Howard Street to Roosevelt Road under the provisions of the order of February 18th "continued to be Rapid Transit employees."

Rather than await the final action of the National Mediation Board in the representation dispute, and to subsequently recognize petitioners as the duly authorized representatives of the employees on the North Shore line an

attempt was made by the receivers to influence and coerce those employees against selecting and retaining membership in the Brotherhoods, and the receivers retaliated against their own employees whose seniority guaranteed them rights to exclusively operate North Shore trains south of Howard Street into Roosevelt Road and return, as they have for the past 23 years. All of the acts of the receivers, the filing of the "Suggestions" to remove their own employees at Howard Street, preferring employees of an intrastate carrier, all on the eve of the election conducted by the National Mediation Board are of the type of interference, influence and coercion condemned by the Supreme Court in *Texas & N. O. R. Co.* v. *Brotherhood of Ry. & S. S. Clerks,* 281 U. S. 548, 568. In that case the Court, in referring to the above terms, said:

> "The intent of Congress is clear with respect to the sort of conduct that is prohibited. 'Interference' with freedom of action and 'coercion' refer to well understood concepts of the law. The meaning of the word 'influence' in this clause may be gathered from the context, *Noscitur a sociis. Virginia* v. *Tennessee,* 148 U. S. 503, 519. The use of the word is not to be taken as interdicting the normal relations and innocent communications which are a part of all friendly intercourse, albeit between employer and employee. 'Influence' in this context plainly means pressure, the use of the authority or power of either party to induce action by the other in derogation of what the statute calls 'self-organization.' The phrase covers the abuse of relation or opportunity so as to corrupt or override the will, and it is no more difficult to appraise conduct of this sort in connection with the selection of representatives for the purposes of this Act than in relation to well-known applications of the law with respect to fraud, duress and undue influence. If Congress intended that the prohibition, as thus construed, should be enforced, the courts would encounter no difficulty in fulfilling its purpose, as the present suit demonstrates."

In addition to the *Clerks'* case, the Supreme Court has upheld the prohibitions against interference, influence and coercion under Section 2, of the Railway Labor Act, which specifically outlaws various methods of engaging in such conduct. *Virginian Ry. Co.* v. *System Federation,* 300 U. S. 515. See also *Brotherhood of Ry. Shop Crafts* v. *Lowden,* 86 F. (2d) 458, Cert. den. 300 U. S. 659. Numerous decisions under the National Labor Relations Act also demonstrate the validity of the prohibition. See especially, *Carlisle Lumber Co.* v. *National Labor Relations Board,* 94 F. (2d) 138, Cert. den. 304 U. S. 575; *National Licorice Co.* v. *National Labor Relations Board,* 104 F. (2d) 655, 309 U. S. 350.

The Court of Appeals below erroneously held that since the Rapid Transit Company leased certain tracks to the North Shore line, it had the right to dictate terms and conditions upon which the North Shore line might operate over such leased tracks. The substitution of employees as provided for in the order of February 18th, is had over tracks which are not entirely owned by the Chicago Rapid Transit Company but which are leased by it from the Chicago, Milwaukee, St. Paul & Pacific Railway Company (R. 55). The petitioners have had collective bargaining agreements with the Chicago, Milwaukee, St. Paul & Pacific Railway Company over a long period of years (See Annual Reports of the National Mediation Board, First to Tenth, inclusive). These agreements were in existence long prior to the enactment of the Railway Labor Act of 1926.

The Court of Appeals below held that the Railway Labor Act did not prohibit the State from exercising its police power for the right to approve or disapprove the terms and conditions of an inter-corporate agreement regardless of whether it affected collective bargaining agreements promulgated under the Railway Labor Act.

The power of a state to interfere with collective bargaining agreements promulgated under a federal act, like the power of a state to fix intrastate railroad rates, must yield to the power of the national government when their regulation is appropriate to the regulation of interstate commerce. *United States* v. *Louisiana,* 290 U. S. 70, 74, 75; *Wisconsin Railroad Com.* v. *Chicago, B. & Q. Ry. Co.,* 257 U. S. 563; *Shreveport Rate Cases,* 234 U. S. 342. Similarly, a contract between a state and a rail carrier fixing intrastate rates is subject to regulation and control by Congress, acting within the commerce clause, *New York* v. *United States,* 257 U. S. 591, as are state agencies created to effect a public purpose. *Sanitary District of Chicago* v. *United States,* 266 U. S. 405. In each case the power of the state is subordinate to the constitutional exercise of the granted federal power.

If a state commission could lend its aid to carriers subject to the Railway Labor Act as a means to avoid the duties imposed by Congress under that Act, railroad labor organizations and the employees represented would find little or no security in collective bargaining agreements. If this Court should approve this back-door method of avoiding agreements, and winking at federal statutes, it will encourage similar action by other carriers and result in a national upheavel of serious consequences.

One would have to disregard the entire history of railroad labor relations to be able to say that the changes obtained by the order of February 18, and its subsequent approval by the Illinois Commerce Commission to give it validity, constituted changes only in inter-corporate operating relationships and were not changes in working conditions as that term is used in the Railway Labor Act.

The receivers agreed with the employees in the agreement Section 2(c) that all working conditions not specifically

mentioned in the contract would remain as at present "except as changed by mutual agreement" (Tr. 41).

This was a right of collective bargaining under the Railway Labor Act and where rights of collective bargaining, created under that Act contained definite prohibitions of conduct or were mandatory in form, this Court enforced the rights judicially. *Texas & N. O. R. Co.* v. *Brotherhood of Ry. Clerks*, 281 U. S. 548; *Virginian Ry. Co.* v. *System Federation*, 300 U. S. 515; *Switchmens Union* v. *Mediation Board*, 320 U. S. 297, 300, 301.

The Railway Labor Act, in Section 6, bears on its face the prohibition of changing working conditions while a dispute is pending before the National Mediation Board. That prohibition applied to a receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of a carrier.

CONCLUSION.

The Petition for Certiorari should be granted in order that this Court may review the decision of the United States Circuit Court of Appeals for the Seventh Circuit in this case.

Respectfully submitted,

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